

## **IC 35-43-6**

### **Chapter 6. Home Improvement Fraud**

#### **IC 35-43-6-1**

##### **Application of chapter**

Sec. 1. This chapter applies only to residential property, which means real property used in whole or in part as a dwelling by a consumer and includes all fixtures to, structures on, and improvements to the real property.

*As added by P.L.251-1987, SEC.4.*

#### **IC 35-43-6-2**

##### **"Consumer" defined**

Sec. 2. As used in the chapter, "consumer" means an individual who owns, leases, or rents the residential property that is the subject of a home improvement contract.

*As added by P.L.251-1987, SEC.4.*

#### **IC 35-43-6-3**

##### **"Home improvement" defined**

Sec. 3. As used in this chapter, "home improvement" means any alteration, repair, or other modification of residential property. However, this chapter does not apply to the original construction of a dwelling.

*As added by P.L.251-1987, SEC.4.*

#### **IC 35-43-6-4**

##### **"Home improvement contract" defined**

Sec. 4. As used in this chapter, "home improvement contract" means an oral or written agreement between a home improvement supplier and a consumer to make a home improvement and for which the contract price exceeds one hundred fifty dollars (\$150). Multiple contracts entered into by a home improvement supplier with a consumer are considered a home improvement contract for the purposes of this chapter if the multiple contracts arise from the same transaction.

*As added by P.L.251-1987, SEC.4.*

#### **IC 35-43-6-5**

##### **"Home improvement contract price" defined**

Sec. 5. As used in this chapter, "home improvement contract price" means the amount actually charged for the services, materials, and work to be performed under the home improvement contract but does not include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the home improvement.

*As added by P.L.251-1987, SEC.4.*

#### **IC 35-43-6-6**

### **"Home improvement supplier" defined**

Sec. 6. As used in this chapter, "home improvement supplier" means a person who engages in or solicits home improvement contracts whether or not the person deals directly with the consumer.

*As added by P.L.251-1987, SEC.4.*

### **IC 35-43-6-7**

#### **"Person" defined**

Sec. 7. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

*As added by P.L.251-1987, SEC.4.*

### **IC 35-43-6-8**

#### **Unconscionable contract**

Sec. 8. For the purposes of this chapter, a home improvement contract is unconscionable if an unreasonable difference exists between the fair market value of the services, materials, and work performed or to be performed and the home improvement contract price.

*As added by P.L.251-1987, SEC.4.*

### **IC 35-43-6-9**

#### **Prima facie unconscionability**

Sec. 9. For the purposes of this chapter, a home improvement contract price in excess of four (4) times greater than the fair market value of the services, materials, or work performed or to be performed is prima facie evidence of an unconscionable home improvement contract.

*As added by P.L.251-1987, SEC.4.*

### **IC 35-43-6-10**

#### **Fair market value of improvement**

Sec. 10. For the purposes of this chapter, the fair market value of a home improvement is that amount which in commercial judgment or under usage of trade would be reasonable for services, materials, and work of similar quality and workmanship.

*As added by P.L.251-1987, SEC.4.*

### **IC 35-43-6-11**

#### **Determination of fair market value**

Sec. 11. For the purposes of this chapter, fair market value shall be determined as of the time either the home improvement contract was formed or at the time any of the work commenced under the home improvement contract, whichever is earlier. However, if such evidence is not readily available, the fair market value prevailing within any reasonable time before or after the time described, which in commercial judgment or under usage of trade would serve as a reasonable substitute, may be used.

*As added by P.L.251-1987, SEC.4.*

## **IC 35-43-6-12**

### **Home improvement fraud; offense**

Sec. 12. (a) A home improvement supplier who enters into a home improvement contract and knowingly:

- (1) misrepresents a material fact relating to the terms of the home improvement contract or the preexisting or existing condition of any part of the property involved;
- (2) creates or confirms a consumer's impression that is false and that the home improvement supplier does not believe to be true;
- (3) promises performance that the home improvement supplier does not intend to perform or knows will not be performed;
- (4) uses or employs any deception, false pretense, or false promise to cause a consumer to enter into a home improvement contract;
- (5) enters into an unconscionable home improvement contract with a home improvement contract price of four thousand dollars (\$4,000) or more; or
- (6) fails to comply with the provisions of IC 23-15-1 relating to the use of an assumed name in the conduct or transaction of business in Indiana and misrepresents or conceals either the home improvement supplier's real name, business name, or business address;

commits home improvement fraud, a Class B misdemeanor, except as provided in section 13(a) of this chapter.

(b) A home improvement supplier who, with the intent to enter into a home improvement contract, knowingly:

- (1) damages the property of a consumer;
- (2) does work on the property of a consumer without the consumer's prior authorization;
- (3) misrepresents that the supplier or another person is an employee or agent of the federal government, the state, a political subdivision of the state, or any other governmental agency or entity; or
- (4) misrepresents that the supplier or another person is an employee or agent of any public or private utility;

commits a Class A misdemeanor, except as provided in section 13(b) of this chapter.

*As added by P.L.251-1987, SEC.4.*

## **IC 35-43-6-13**

### **Enhanced offenses**

Sec. 13. (a) The offense in section 12(a) of this chapter is a Class A misdemeanor:

- (1) when the home improvement contract price is one thousand dollars (\$1,000) or more;
- (2) for the second or subsequent offense;
- (3) if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention;
- (4) if, in a violation of section 12(a)(5) of this chapter, the home

improvement contract price is ten thousand dollars (\$10,000) or less;

(5) if, in a violation of section 12(a)(6) of this chapter, the home improvement contract price is more than one thousand dollars (\$1,000); or

(6) if, in a violation of section 12(a)(1) through 12(a)(4) of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less.

(b) The offense in section 12 of this chapter is a Class D felony:

(1) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is more than ten thousand dollars (\$10,000);

(2) if, in a second or subsequent violation of section 12(a)(1) through section 12(a)(4) of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is one thousand dollars (\$1,000) or less;

(3) if, in a violation of section 12(a)(5) of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; and

(4) if, in a violation of section 12(b) of this chapter, the consumer is at least sixty (60) years of age.

(c) The offense in section 12(a) of this chapter is a Class C felony:

(1) if, in a violation of section 12(a)(1) through section 12(a)(4) of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000);

(2) if, in a violation of section 12(a)(1) through section 12(a)(4) of this chapter, the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention; and

(3) if, in a violation of section 12(a)(5) of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000).

*As added by P.L.251-1987, SEC.4.*

## **IC 35-43-6-14**

### **Defense**

Sec. 14. For the purposes of section 13 of this chapter, it is not a defense to home improvement fraud committed against a consumer who is at least sixty (60) years of age that the supplier reasonably believed the consumer to be an individual less than sixty (60) years of age.

*As added by P.L.251-1987, SEC.4.*